

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

<p>WOMEN FOR AMERICA FIRST,</p> <p style="text-align: center;"><i>Plaintiff,</i></p> <p>v.</p> <p>BILL DE BLASIO, <i>in his official capacity as Mayor of New York City, New York, and POLLY TROTTEBERG, Commissioner of the New York City Department of Transportation,</i></p> <p style="text-align: center;"><i>Defendants.</i></p>	<p style="text-align: center;">Civil Action No.: 20-5746</p> <p style="text-align: center;">FIRST AMENDED COMPLAINT</p>
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Plaintiff Women for America First (“Plaintiff”), by and through its undersigned counsel, files this Complaint against defendants Bill de Blasio and Polly Trottenberg in their official capacities for violations of 42 U.S.C. § 1983, and in support thereof states as follows:

JURISDICTION & VENUE

1. Plaintiff Women for America First is a Virginia-based nonprofit located at 441 North Lee Street, Suite 300, Alexandria, Virginia. Women for America First routinely holds events in New York City, has thousands of supporters nationwide, many of whom – including Plaintiff’s Executive Director – reside in New York City and which strives to promote the empowerment of the women.

2. Defendant Bill de Blasio is the Mayor of New York City. Defendant de Blasio’s offices are located at City Hall, New York, New York. Defendant de Blasio is being sued in his official capacity.

3. Defendant Polly Trottenberg is the Commissioner of the New York City Department of Transportation (“DOT”). Defendant Trottenberg’s offices are located at 80 Maiden Lane, 17th Floor, New York, New York. Defendant Trottenberg is being sued in her official capacity.

FACTS COMMON TO ALL CLAIMS

4. The “Black Lives Matter” (“BLM”) movement was founded in 2013 in response to the acquittal of the acquittal of an Hispanic man, George Zimmerman. It is a decentralized movement in the United States advocating for civil disobedience in protest against incidents of police brutality and racially motivated violence against African-American people.

5. One organization known simply as Black Lives Matter is a decentralized network with about 16 chapters in the United States and Canada, while a larger Black Lives Matter movement exists consisting of various separate like-minded organizations and unorganized individuals uniting around the slogan that is the movement’s name. The broader movement and its related organizations typically advocate against police violence towards black people, as well as for various other policy changes considered to be related to the rights of black people.

6. The movement became nationally recognized for street demonstrations following the 2014 deaths of two African Americans in violence related to police, culminating in protests – some non-violent, some decidedly violent – around the country.

7. BLM is a political movement. In the summer of 2015, BLM activists became involved in the 2016 United States presidential election, its participants essentially unanimously supporting the Democratic presidential candidate, Hillary Clinton.

8. On July 7, 2016, a BLM protest was held in Dallas, Texas, following which one participant, an African American named Micah Xavier Johnson, opened fire in an ambush, killing

five Dallas police officers and wounding seven others and two civilians. The gunman was then killed by a robot-delivered bomb. Before he died, according to police, Johnson said that "he was upset about Black Lives Matter," and that "he wanted to kill white people, especially white officers." Most Black Lives Matter activists denounced the shootings. The next day, July 8, more than 100 people were arrested at Black Lives Matter protests across the United States.

9. The movement returned to national headlines and gained further international attention during the global George Floyd protests in 2020 following George Floyd's killing by a Minneapolis police officer. An estimated 15 million to 26 million people participated in the 2020 Black Lives Matter protests in the United States, making Black Lives Matter one of the largest movements in U.S. history. The movement has advocated to "defund the police" and "invest directly" into black communities and in "alternative emergency response models."

10. The BLM movement is for all practical purposes affiliated with the Democratic Party, notwithstanding expressions of frustration by BLM activists with the leadership of that party.

11. BLM is unquestionably hostile to the Republican Party and in particular to President Donald J. Trump.

12. According to a June 17, 2020 article in *Time* magazine, BLM protests "could be a political bonanza for Democrats, political strategists say, galvanizing its most reliable voting bloc and boosting voter registration." The article continues:

Already, the movement has fired up some voters. The progressive non-profit Rock The Vote registered 150,000 new voters in the first two weeks of June, the highest tally of any two-week period in the 2020 election cycle. And despite significant obstacles at the polls, Democrats in Georgia cast more than 1 million ballots in the state's June 9 primary, breaking the record set in the 2008 contest between Barack Obama and Hillary Clinton. "People were in line for hours," says Nse Ufot, executive director of the New Georgia Project, which registered hundreds of voters at Black Lives Matter protests ahead of the primary. "Can you imagine the strength,

the resolve, the steely-eyed determination that folks are going to have when they go to the polls in November?”

13. The party’s official website, Democrats.org, features a page entitled, “Black Lives Matters Organizing Resources” that offers links to petitions demanding prosecution of the officers involved in the deaths of George Floyd, firing of the officers involved in the death of Breonna Taylor, one from a related organization called “Color of Change” that promotes “a platform of structural demands to reduce, over time, the impacts of policing in concrete and tangible ways” and various other resources, including “Other ways to get involved.” The Democratic Party web page for Black Lives Matter also gives advice to street protesters to avoid law enforcement investigations, noting, “Signal has just introduced a ‘blur tool’ for your photos. They write, ‘The latest version of Signal for Android and iOS introduces a new blur feature in the image editor that can help protect the privacy of the people in the photos you share. Now it’s easy to give every face a hiding place, or draw a fuzzy trace over something you want to erase.’”

14. Few politicians have made the commitment to BLM more central to their work in government than the Mayor of the City of New York, defendant Bill De Blasio, who is a Democrat.

15. A New York *Post* article from July 10, 2020 entitled, “De Blasio doubles down on support of Black Lives Matter protests in NYC” observed as follows:

Mayor Bill de Blasio doubled down Friday on his decision to bless Black Lives Matter marches wherever and whenever they may happen while pulling the permits for the Big Apple’s usual slate of summertime parades and street festivals due to the threat posed by large gatherings amid the coronavirus.

“I’ve said many times — the protests, this is a particular moment in history where 400 years of oppression, 400 years of racism are being addressed in a very powerful way,” Hizzoner said. “That can’t compare to anything else.”

De Blasio made the remarks after again reiterating that it would be unsafe to allow parades and festivals that often bring tens of thousands to the streets because of the risk of transmitting COVID-19 — and the need to use the city’s public space and resources to bolster its street closure programs for pedestrians and restaurants.

16. As part of that commitment, on the morning of July 9, 2020, New York City employees – including defendant De Blasio – and private citizens began painting “Black Lives Matter” in large, bright yellow letters, as shown below, on Fifth Avenue.



Photograph published by USA Today, Mark Lennihan, AP. July 9, 2020

17. The location of the “mural” on Fifth Avenue is directly in front of Trump Tower, a building owned and named after President Donald J. Trump and where he maintains a residence.

18. According to the *New York Times*, “The public art project is the latest battle in a feud between President Trump and Mayor Bill De Blasio.” As *Forbes* magazine wrote, “Last month, at the height of the Black Lives Matter protests, Mayor de Blasio announced that each borough in New York City would get its own BLM mural. But location of this one in Manhattan can only be viewed at a direct dig at the president.”

19. According to the website of the local CBS affiliate in New York, CBSN, “As part of a bigger racial justice movement, matching murals have been popping up in cities across the country, starting in Washington, D.C. Here at home, the mayor vowed that the BLM slogan will

appear in every borough in the city. The unique thing about this one is its location: Right in front of Trump Tower.”

20. The BLM mural referred to in Washington DC, as well as others such as the one painted by Redwood City, California, have in fact been removed following free-speech challenges.

21. Another outlet, Artnet.com, wrote as follows:

There’s a new view from President Donald Trump’s New York City apartment. Painted in giant yellow letters on the street below Trump Tower are the words “Black Lives Matter,” one of seven similar murals painted on sites throughout the city at the behest of Mayor Bill de Blasio.

“The president is a disgrace to the values we cherish in New York City,” Julia Arredondo, a spokesperson for the mayor, told the *New York Times* when the plan was unveiled last month. “Any time [Trump] wants to set foot in the place he claims is his hometown, he should be reminded Black Lives Matter.”

Outside of Trump Tower, on Fifth Avenue between East 56th and 57th streets, the mayor himself took a paint roller to the streets to help create the massive art project. He was assisted by Al Sharpton and First Lady Chirlane McCray, as well as 20 local artists and volunteers from the youth organization Street Corner Resources.

If the gesture is, as some Twitter users suggested, an attempt to troll the president, Trump took the bait. . . .

The widely embraced trend has, however, come under criticism by those, including the Black Lives Matter Global Network’s DC chapter, who see the murals as a “performative gesture,” rather than a commitment to real change that would benefit the Black community.

22. Upon information and belief, this painting of a public street, described by defendant De Blasio as a “mural,” was undertaken by the New York City Department of Transportation (“DOT”) at an initial cost of approximately \$6,000 in funds allocated to the DOT for transportation-related purposes.

23. Pursuant to regulations posted by the City of New York at NYC Park’s website: <https://www.nycgovparks.org/art-and-antiquities/temporary-guidelines/murals>, citizens and

organizations may only submit requests to paint murals in NYC Parks, not on New York City streets.

24. Nonetheless, based on the apparent change of policy concerning murals, on the evening of July 9, 2020, plaintiff submitted a request to defendant de Blasio requesting to paint a message of its own on a New York City street, stating as follows:

In light of New York City's decision to open Fifth Avenue as a public fora and permit a bright yellow "Black Lives Matter" mural to be painted on the street, I write on behalf of Women for America First to express our organization's interest in likewise painting a mural of our own.

Women for America First is a Virginia-based nonprofit that routinely holds events in New York City, has thousands of supporters nationwide—many of whom reside in New York City, including myself—and consistently strives to promote the empowerment of women.

In light of your generosity in opening up historic Fifth Avenue as a public fora by allowing the Black Lives Matter organization to paint their motto, our organization, too, would like to paint a mural of our motto—"Engaging, Inspiring and Empowering Women to Make a Difference!"—on Fifth Avenue, or another similar street within the city's jurisdiction. In the event your Honor does not allow our organization to use Fifth Avenue, we propose painting our mural on FDR Drive outside Gracie's Mansion. Alternatively, we are amenable to painting our mural on 42nd Street near Times Square, or even City Hall Park should you prefer.

Regarding due concern, we would use the identical color paint and font as the Black Lives Matter organization, self-fund such painting, and we further agree that the square footage used for our mural would be equal to the square footage used for the Black Lives Matter organization's mural.

Women for America First is cognizant that we will likely need local authorities to assist us in traffic diversion and parking restrictions while the painting is completed. Of course, we are amenable to completing the painting at any hour most convenient for your Honor and the City of New York.

Thank you for your time and consideration of our request during a time in which our message could not be more important for our nation. We look forward to your response within three (3) business days.

25. On July 14, 2020, plaintiff transmitted a hard copy of the above-referenced request via FedEx to Mayor de Blasio's office, which was received on July 15, 2020.

26. By the date hereof, plaintiff still has not received a response from defendant de Blasio regarding this request, which he acknowledged receiving in a press conference on July 23, 2020.

27. When questioned about the request, defendant de Blasio stated that the Black Lives Matter movement “transcends any notion of politics,” and he defended allowing the words to be painted on streets across the city while not approving similar mural requests from groups like the pro-cop Blue Lives Matter. “This is about something much bigger than any one group,” de Blasio added. “This is about righting a wrong and moving forward. So I think that’s the right approach.”

28. Upon information and belief, the Black Lives Matter organization did not submit a formal request through established channels to submit such requests to paint its mural on Fifth Avenue or other duplicative murals that have subsequently been allowed, by defendants, to be painted on streets throughout New York City.

29. A New York *Post* report published on July 23, 2020 states:

When asked if de Blasio will approve the requested “Blue Lives Matter” mural, City Hall spokeswoman Julia Arredondo said last week: “It’s not open season to paint our streets. DOT has an application process, and requests must go through their site, not open letters.

“For all lives to matter, we must first make clear that black lives matter. That is why we approved the murals and met those words with actions,” Arredondo said.

30. On information and belief, there is no “application process” for painting political messages, murals or other non-traffic-related messages on New York City streets.

31. There is no safety or traffic management benefit to the BLM “mural” on Fifth Avenue. One expert recently explained, in an article in *Forbes*, the reasons why:

If you follow the news, you most likely have seen the recent efforts of numerous cities that have been painting large block letters onto their streets.

In many cases, the streets are considered active in that once the painting has been completed, the roadway is reopened to everyday traffic. Thus, these are not

seemingly specially set aside streets that are secured from vehicular traversal and instead are put back into their usual service after having been painted.

Customarily, paint that is used on an active traffic-going street is employed as a traffic control device, known in the roadway infrastructure realm as “road surface markings” and are used to officially depict navigational guidelines and directions.

When drivers proceed along a street, they are at times provided visual cues via painted asphalt surfaces that showcase where the median is, where crosswalks are, and generally is indicative of the curbs and other key roadway features. The colors of yellow and of white are particularly reserved for these purposes and drivers are accustomed to noting where those painted lines and areas are.

A driver that is familiar with a given street is apt to no longer overtly notice the painted surfaces, though they seemingly subconsciously still pay attention to the guidance and use it reflexively as they drive down a street so marked.

Drivers that have not previously entered onto a particular street and are approaching it for the first time are likely to be directly cognizant of the painted guidance, using it actively as they attempt to safely make their way along that street.

Federal standards for the use of painted surfaces as a traffic control device are included in a USA governmentally approved document referred to as the MUTCD (Manual on Uniform Traffic Control Devices for Streets and Highways, available at [this link here](#)) as published by the Federal Highway Administration (FHWA) and the Office of Transportation Operations (HOTO).

Additionally, the FHWA issued an additional official ruling on the various uses of painted surfaces as a supplemental memorandum (see the [link here](#)).

The supplement memorandum is often cited when examining what has been an already rising interest by cities in [painting murals and other artistic renderings](#) onto active streets and in-use roadway surfaces.

Why is painted art on the roadway worthy of added consideration and potential concern?

Some have expressed qualms that the artistry displayed could be distracting to those driving on such streets.

A driver might mistakenly interpret a portion of the artistic rendering to be a driving guidance directive and therefore drive improperly, either illegally driving or potentially driving in a means that could endanger themselves and other nearby drivers, perhaps also jeopardizing pedestrians.

Or, a driver might become distracted by the artistic presentation and thus fail to realize that a car ahead of them is braking suddenly, or that a pedestrian is

jaywalking in front of the car. As such, the driver might plow into another vehicle or ram into a pedestrian as a result of being focused on the art and bereft of attention to the driving situation.

Another possibility is that the painted art has overlapped, obscured, or confounded the intended painted traffic control surfaces.

Suppose that an artistic mural extends over a crosswalk and as a result, the formal crosswalk-painted lines are less identifiable or possibly even no longer discernable at all.

Thus, the paint markings intended for traffic safety are no longer viably able to be seen and the drivers of the roadway cannot as readily gauge the nature of how to best navigate the street.

The use of painted surfaces as a traffic control mechanism is supposed to be a visual indicator for drivers and something that is observed and abided by on nearly an instinctive basis while driving. Indeed, the use of nationwide standards has provided a uniformity that enables drivers to minimize uncertainty about what the paint is trying to tell them, becoming second nature in detection, and decidedly is not supposed to distract drivers from the life-or-death nature of the driving task (i.e., the painted surfaces are considered a crucial aid to the driving task and the safety thereof).

So, when there is paint used on an active roadway surface and that paint does not have an ascertained traffic guidance purpose, one logical question arises as to whether the painted conveyance will undercut traffic safety or whether it will be neutral or, surprisingly to some, possibly even bolster traffic safety.

32. The author was not aware of any evidence suggested increased traffic safety resulting from such street painting.

33. To the contrary, messages such as the BLM “mural” denigrate traffic safety.

34. For this reason, a “defund the police” street mural along Water Street in downtown political statement Milwaukee was removed on Friday, July 10 due to “serious traffic safety concerns,” according to officials with the Milwaukee Department of Public Works. Safety was also cited as a reason for removal of the similar mural in Redwood City, California.

35. Defendant de Blasio ran in the Democratic primary for President in 2020.

36. The failure of de Blasio's presidential run is widely considered to have damaged his future political prospects. "I think immediately it didn't help," de Blasio biographer Joseph Viteritti told the New York *Post* about the campaign's effect on de Blasio's profile. "In the long run, I'm not sure it's going to be better."

37. According to the article, "De Blasio had hoped to raise his national profile — but his missteps may have not helped his chances at a Cabinet-level position with a potential Democratic administration. and, on information and belief, has political ambitions to run for national or other elected office as a Democrat after the end of his final term as Mayor of New York City or to be appointed to a prominent position in an anticipated Biden Administration."

38. On information and belief, de Blasio's conduct as alleged herein is intended as a political gesture to the BLM movement and those sympathetic to it which has been done in order to overcome the damage done by his political failure as a presidential candidate and thereby enhance his future prospects as a Democratic candidate for office or appointee, and by rallying BLM support for Democrats, including in the 2020 Presidential election.

39. Consistent with his political ambitions, defendant de Blasio also refused to allow Blue Lives Matter, a pro-police group, or Standing Up for NYC, a group of city residents who are antipathetic to the Mayor's politics and policies, to paint messages of their own on city streets. Hostility to police is a current platform of urban Democratic Party politics and is consistent with the BLM platform.

40. Explaining the distinction, de Blasio stated, "The original sin of the United States of America, slavery, and all of the effects over 400 years being brought out in the open in a new way and a chance for this country to get it right, to address this problem, to move forward, and it's

summarized in the three words ‘Black Lives Matter,’ so this is about something much bigger than any one group, this is about righting a wrong and moving us all forward.”

41. Even without reference to his own political ambitions, defendant de Blasio’s statements, justifications and rationale for painting or permitting the painting of the BLM “mural” on Fifth Avenue demonstrate that its entire purpose is political and partisan, not civic, safety-related or cultural.

COUNT I

VIOLATION OF 42 U.S.C. § 1983

42. Plaintiff incorporates paragraphs 1-12 by reference as if fully set forth herein.

43. Defendants, acting under color of New York law, have deprived and continue to deprive plaintiff of its First Amendment Rights guaranteed by the U.S. Constitution in violation of 42 U.S.C. § 1983, by, *inter alia*:

- a. Allowing New York City streets to be used for the painting of partisan political messages based on the viewpoints favored by the Mayor and other political leaders;
- b. Denying plaintiff and others the timely opportunity to use New York City streets to paint other own political or expressive messages;
- c. Depriving plaintiff of its right to paint a political or expressive message on a New York City street for reasons that are not narrowly tailored to a compelling government interest;
- d. Depriving plaintiff of its right to paint a political or expressive message on a New York City street for reasons that are not substantially related to an important government interest;

- e. Failing to provide a reasonable basis for denying plaintiff the opportunity to paint its political or expressive message on a New York City street;
- f. Favoring the viewpoint of the political message painted on Fifth Avenue and other New York City streets over the message plaintiff has requested to paint;
- g. Expending DOT funds on painting, maintaining, and endorsing the expressive message of one organization over plaintiff's message;
- h. Failing to provide reasonable, non-arbitrary processes and procedures for timely consideration of plaintiff's expressive message; and
- i. Engaging in preferential political speech in favor of a partisan organization that supports his own political ambitions.

44. Plaintiff is suffering irreparable harm as a direct and proximate result of Defendants' deprivation of Plaintiff's First Amendment rights in violation of 42 U.S.C § 1983 and will continue to suffer such irreparable harm unless defendants' unlawful conduct is enjoined.

45. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully requests that this Court:

- a. Declare defendants' conduct unconstitutional in violation of plaintiff's First Amendment Rights and 42 U.S.C. § 1983;
- b. Enjoin defendants from continuing to deprive plaintiff of its First Amendment rights as guaranteed by 42 U.S.C. § 1983;
- c. Order defendants to issue a permit allowing plaintiff to paint its expressive message on Fifth Avenue at or near defendant's mural or one of the substantially similar streets plaintiff proposed as reasonable alternatives for the same number of days as

the “Black Lives Matter” mural has and will continue to exist on Fifth Avenue;

- d. Award attorney’s fees and costs pursuant to 42 U.S.C. § 1988; and
- e. Grant any further relief this Court deems just and proper.

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